

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 11, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Town of Merton Board of Adjustment
Paul and Sue Warner, BA05:015, petitioners
Donna Roberts, BA05:015, neighbor
Richard Roy, BA05:015, neighbor
Mary Lynn Wedeward, BA05:015, neighbor
James Mathes, BA03:075, petitioner
Attorney Dean B. Richards, BA05:015 and BA03:075,
attorney for the petitioners
Attorney Robyn Schuchardt, BA03:075, Waukesha County
Assistant Corporation Counsel
John Connell and Lorraine Wetzel, BA05:025, petitioners
Nathaniel and Heather Cobb, BA05:026, petitioners
Don and Carol Reinbold, BA05:027, petitioners
Emily Koeppell, BA05:027, neighbor
Tim Samuels, BA05:033, builder
Lou Hernandez, BA05:028, petitioner
(public hearing scheduled for May 25, 2005)

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of April 13, 2005.*

The motion was seconded by Mr. Tarmann and carried with four yes votes. Mr. Schmidt abstained because he was not present at the meeting of April 13, 2005.

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of April 27, 2005.*

The motion was seconded by Mr. Schultz and carried unanimously.

NEW BUSINESS:

BA05:015 PAUL AND SUE WARNER

Mr. Tarmann *I move to approve the request in accordance with the conditions recommended in the Staff Report, for the reasons set forth in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a Zoning Permit, a Certified Survey Map combining the two separately described parcels must be prepared by a Registered Land Surveyor, submitted to both the Town of Delafield and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division for review and approval, and recorded in the Waukesha County Register of Deeds office.
2. The new residence and attached garage must be located at least 25 ft. from the edge of the platted road right-of-way on the northwest side of the property (improved Shorewood Rd.) and at least 14 ft. from the edge of the unimproved platted road right-of-way on the northeast side of the property, as measured to the outer edges of the walls, with overhangs not exceeding two (2) ft. in width.
3. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the location of the proposed residence, attached garage, patio, deck and retaining walls, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. In order to ensure construction of the new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and all proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 3.

5. No retaining walls will be permitted within 75 ft. of the lake.
6. The design of any proposed retaining walls over 4 ft. in height must be certified by a structural engineer, prior to the issuance of a Zoning Permit.
7. The non-conforming patio near the lake must be removed and the area revegetated, within twelve (12) months of the date of issuance of the Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The Planning and Zoning Division staff believes it would be unnecessarily burdensome to require the proposed residence and attached garage to meet the road setback requirement from the unimproved road right-of-way and also from the improved portion of Shorewood Rd.

The platted road right-of-way on the northeast side of the property is unimproved and the Town of Delafield has indicated they have no intention of paving or otherwise improving that road right-of-way. If that unimproved road right-of-way did not exist, the proposed residence and attached garage would meet the offset requirement from the northeast lot line. The improved portion of Shorewood Rd. is a minor dead-end road, serving only seven homes beyond the subject property, and the proposed 25 ft. setback does not pose a safety hazard and is not contrary to the public interest. Further, the topography of the site makes it difficult to locate a residence in a conforming location. The approval of this request, with the recommended conditions, will allow a new residence and attached garage to be built in approximately the same location as the existing residence, which will minimize the area of disturbance. Therefore, the approval of the requested road setback variances, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:025 JOHN CONNELL AND LORRAINE WETZEL

Mr. Bartholomew

I move to approve the request in accordance with the conditions recommended in the Staff Report, for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Schmidt and carried with four yes votes. Mr. Schultz abstained.

The staff's recommendation was for approval, with the following conditions:

1. The variances granted on April 1, 1970, to permit the construction of a 6 ft. x 24 ft. addition on the road side of the residence and the construction of a 16 ft. x 34 ft. attached garage on the east side of the residence (BA70:006), shall be considered to be null and void.

2. The proposed second floor addition must not extend beyond the perimeter of the existing residence, with overhangs not to exceed 2 ft. in width.
3. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above condition, must be submitted to the Planning and Zoning Division staff for review and approval.
4. A detailed cost estimate for the proposed construction must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The existing residence and the proposed second floor addition conform with all locational requirements of the Ordinance, with the exception of offset from the west lot line. It is only the northwest corner of the residence and the proposed second floor addition that are too close to the west lot line and the offset of that corner is non-conforming by only 1.32 ft. Since the proposed second floor addition will be no closer to the west lot line than the existing residence, it requires only a special exception, rather than a variance, from the offset requirement. A special exception does not require the demonstration of an unnecessary hardship, only a finding that the proposed construction will not be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects. The Planning and Zoning Division staff believes the proposed second floor addition has met this test.

The requested variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the floor area ratio requirement do require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Since the cost of the 1969 dormer addition was 6.3% of the fair market value of the structure, denial of the requested variance to remodel a non-conforming structure in excess of 50% of its fair market value would prevent the cost of this remodeling from exceeding 43.7% of the current fair market value of the residence, or \$68,500. Placing such a limit on this remodeling would likely make it impossible to remodel and expand the poorly constructed and non-functional second floor, which the Planning and Zoning Division staff believes would be unnecessarily burdensome. A hardship also exists with respect to the requested floor area ratio variance. Conformance with the maximum permitted floor area ratio of 19.5% would permit a total floor area of only 807 sq. ft., which is smaller than the existing residence and not in conformance with the 850 sq. ft. minimum required first floor area. The proposed second floor addition will not decrease the open space on the property and the slight expansion of the second floor of the residence will still result in a modestly-sized residence, in keeping with other development in the area and not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:026 NATHANIEL AND HEATHER COBB

Mr. Schultz

I make a motion to adopt the staff's recommendation to allow a new foundation to be placed under the existing home, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. The basement floor must be at or above the 100-year flood elevation of 821.1 ft. above mean sea level. Prior to the issuance of a Zoning Permit, it must be verified by a registered land surveyor that the proposed basement will conform with this condition.
3. The finished grades in the area adjacent to the residence must be at least one (1) foot above the 100-year flood elevation of 821.1 ft. above mean sea level.
4. No retaining walls will be permitted within 75 ft. of the lake.
5. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the addition of the proposed basement does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The Planning and Zoning Division staff believes it would be unnecessarily burdensome not to permit a basement to be constructed beneath the existing residence.

The proposed basement addition is needed for structural support. It will not change the shore setback of the existing residence, which is only non-conforming because the natural shoreline has been previously altered, apparently to accommodate a wet boathouse that no longer exists. The residence is located on a peninsula and is nearly centered between the east and west shorelines. The residence is a substantial structure that cannot easily be moved and even if it could be moved, it cannot be relocated to the east to bring it into conformance with the shore setback requirement, because the septic tank is located on the east side of the residence and because the required offset from the east lot line is 20 ft. and the residence is only 26.8 ft. from the east lot line. The proposed basement addition will not adversely affect the lake or the neighboring property owners and is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:075 JAMES AND GAIL MATHES

Mr. Tarmann

I move to approve the request in accordance with the conditions recommended in the Staff Report, for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The new residence, attached garage, deck, and patio must be located in conformance with the road setback, shore setback, and floodplain setback requirements of the Ordinance.
2. The new residence must be located no closer to the side lot lines than the existing residence (5.2 ft. from the east lot line and 5.7 ft. from the west lot line), as measured to the outer edges of the walls, with overhangs not to exceed 2 ft. in width. The proposed patio must be at least 5 ft. from the side lot lines.
3. The floor of the lowest level of the proposed residence, including the crawl space if a crawl space is proposed, must be at or above the 100-year flood elevation of 899.9 ft. above mean sea level.
4. The proposed residence and attached garage must have a footprint, as measured to the outer edges of the walls and including any covered porches or stoops, no larger than the existing building footprint, which is 2,042.3 sq. ft.
5. Prior to the issuance of a Zoning Permit, a complete set of final building plans for the residence, attached garage, deck, and patio, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. The above-required plans must be in substantial conformance with the preliminary plans submitted for review on April 18, 2005.

7. Elimination of the proposed cathedral ceiling above the great room for an expansion of the second floor of the residence will not be permitted without additional approval from the Waukesha County Board of Adjustment.
8. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location and elevation of the proposed residence and attached garage, as well as any proposed decks or patios, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. In order to ensure the construction of the new residence, attached garage, deck, and patio does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition Number 8.
10. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed new residence, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
11. The detached garage must be removed from the property prior to the expiration date of the Zoning Permit for the new residence.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Hardships with respect to conformance with the offset, floor area ratio, and open space requirements exist because of the size and width of the lot. It is impossible to meet the open space requirement, and conformance with the floor area ratio requirement, which would allow a total floor area of only 1,614 sq. ft. precludes the construction of a new residence and garage of even the same size as the existing residence and garage. The approval of this request, with the recommended conditions, will result in a new residence and attached garage, in keeping with other development in the area and located in a more conforming location. As recommended, the new residence and attached garage will not reduce the open space on the property or the offsets, and an extremely non-conforming detached garage will be eliminated. Further, the approval of this request, with the recommended conditions, will not adversely affect the lake or the neighboring property owners and is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:027 DON AND CAROL REINBOLD

Mr. Bartholomew

I make a motion to approve the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was that the hearing regarding the required open space variance be held in abeyance until the meeting of May 25, 2005, to allow the proper legal notice to be published in the newspaper and sent to all appropriate parties. The staff's recommendation regarding the request for road setback and floor area ratio variances was for approval, with the following conditions:

1. The new residence, attached garage, and deck must be located in conformance with the offset, shore setback, and floodplain setback requirements of the Ordinance.
2. The attached garage must be located no closer to the road than proposed, which is 19 ft. from the road right-of-way, as measured perpendicular to the road from the closest point of the attached garage. The road setback shall be measured to the outer edge of the wall and the garage overhang shall not exceed 2 ft. in width.
3. The floor of the lowest level of the proposed residence, including a basement or crawl space if one is proposed, must be at or above the 100-year flood elevation of 899.9 ft. above mean sea level.
4. If the residence has a full basement, it must be located more than one-half below the finished grade, or it will be considered to be the first floor of the residence and must be included as floor area.
5. If more than one foot of backfill is required to be placed around the residence in order to result in a full basement that will be more than one-half below the finished grade, a full basement will not be permitted.
6. If the new residence can be constructed with a full basement, the total floor area, including the first and second floors of the residence and the attached garage, shall not exceed 3,000 sq. ft., as proposed. If the new residence cannot be constructed with a full basement, the total floor area, including the first and second floors of the residence and the attached garage, may be increased to 3,300 sq. ft.
7. The proposed residence and attached garage must have a footprint, as measured to the outer edges of the walls and including any covered porches or stoops, no larger than proposed, which is 2,500 sq. ft.
8. Prior to the issuance of a Zoning Permit, a complete set of plans for the residence, attached garage, and deck, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

9. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location and elevation of the proposed residence, attached garage, and deck, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. If the Plat of Survey differs significantly from the site plan submitted with the application, the Board may reconsider the approval of this request under "Old Business".
10. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the new residence and attached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition Number 9.
11. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed new residence, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The Planning and Zoning Division staff believes it would be unnecessarily burdensome to require the proposed residence and attached garage to meet the road setback and floor area ratio requirements.

Granting the requested road setback variance to permit the new residence to be located in approximately the same location as the existing residence will minimize the amount of disturbance and preserve several mature trees. It will also allow the new residence to be located farther from the lake than the homes on the adjacent lots, which is especially desirable on a narrow lot. Further, the proposed location of the attached garage, which is farther from the road than the existing detached garage and farther from the road than the detached garages on the adjacent lots, will not pose a safety hazard and is not contrary to the public interest. The maximum permitted floor area ratio of 15% would allow a total floor area of only 1,980 sq. ft., which would be unnecessarily burdensome because it is less than currently exists. A total floor area of 1,980 sq. ft. would also not be in keeping with other development in the area. Therefore,

the approval of variances from the road setback and floor area ratio requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:033 URBAN AND GAIL WEBER

Mr. Schultz *I make a motion to approve the request to construct a new residence, in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The first floor of the new residence must contain at least 850 sq. ft., in conformance with the minimum required first floor area.
2. The footprint of the new residence and attached storage shed must not exceed 1,036 sq. ft., as proposed.
3. The new residence, attached storage shed, and deck must be located in conformance with all locational requirements of the Ordinance.
4. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached storage shed and deck, in conformance with all locational requirements of the Ordinance, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure that construction of the new residence does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 4.
6. Prior to the issuance of a Zoning Permit, a copy of the sanitary permit issued by the Environmental Health Division for a new waste disposal system must be furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property and will result in a more conforming situation with the removal of the existing non-

conforming residence located on the west lot line. Hardships exist due to the size of the lot. The property has a lot area of only 10,755 sq. ft., which makes it impossible to conform with the minimum open space requirement of 15,000 sq. ft. The proposed residence is modest in size, which is appropriate for this non-conforming lot, and it is in keeping with other development in the area. The proposed residence is in conformance with all locational requirements of the Ordinance and the first floor exceeds the minimum required first floor area by only 18 sq. ft. Further, it would be unnecessarily burdensome not to permit the proposed 12 ft. x 14 ft. attached storage shed, given that the existing storage shed must be removed to allow the new residence to be located in conformance with the shore and floodplain setback requirements, there is no garage on the property, and the residence will not have a basement. Finally, the proposed residence will not be detrimental to the surrounding neighborhood or the lake. Therefore, the approval of this request, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

None

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:06 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment